

110TH CONGRESS  
1ST SESSION

# S. 2209

To amend the Internal Revenue Code of 1986 to provide incentives to improve America's research competitiveness, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 19, 2007

Mr. HATCH (for himself, Mr. BAUCUS, Ms. CANTWELL, Mr. SMITH, Mr. CRAPO, Ms. SNOWE, Mrs. LINCOLN, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide incentives to improve America's research competitiveness, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Research Credit Im-  
5       provement Act of 2007”.

1 **SEC. 2. SIMPLIFICATION OF RESEARCH AND DEVELOP-**  
 2 **MENT CREDIT.**

3 (a) TRANSITION TO FULLY-IMPLEMENTED SIM-  
 4 PLIFIED CREDIT FOR QUALIFIED RESEARCH EX-  
 5 PANSES.—

6 (1) PHASE-OUT OF TRADITIONAL CREDIT.—

7 Section 41(a) of the Internal Revenue Code of 1986  
 8 is amended—

9 (A) by striking “20 percent” each place it  
 10 appears and inserting “the applicable percent-  
 11 age”, and

12 (B) by adding at the end the following new  
 13 flush sentence:

14 “For purposes of this subsection, the term ‘applicable per-  
 15 centage’ means 20 percent with respect to taxable years  
 16 beginning in 2008 and 2009.”.

17 (2) PHASE-IN OF SIMPLIFIED CREDIT.—Section  
 18 41(c)(5)(A) of such Code is amended—

19 (A) by striking “12 percent” and inserting  
 20 “the applicable percentage”, and

21 (B) by adding at the end the following new  
 22 sentence: “For purposes of the preceding sen-  
 23 tence, the term ‘applicable percentage’ means  
 24 16 percent with respect to taxable years begin-  
 25 ning in 2008 and 18 percent with respect to  
 26 taxable years beginning in 2009.”.

1           (3) EFFECTIVE DATE.—The amendments made  
2           by this subsection shall apply to taxable years begin-  
3           ning after December 31, 2007.

4           (b) FULLY-IMPLEMENTED SIMPLIFIED CREDIT FOR  
5 QUALIFIED RESEARCH EXPENSES.—

6           (1) IN GENERAL.—Subsection (a) of section 41  
7           of the Internal Revenue Code of 1986 (relating to  
8           credit for increasing research activities) is amended  
9           to read as follows:

10          “(a) DETERMINATION OF CREDIT.—

11               “(1) IN GENERAL.—For purposes of section 38,  
12           the research credit determined under this section for  
13           the taxable year shall be equal to 20 percent of so  
14           much of the qualified research expenses for such  
15           taxable year as exceeds 50 percent of the average  
16           qualified research expenses for the 3 taxable years  
17           preceding the taxable year for which the credit is  
18           being determined.

19               “(2) SPECIAL RULE IN CASE OF NO QUALIFIED  
20           RESEARCH EXPENSES IN ANY OF 3 PRECEDING TAX-  
21           ABLE YEARS.—

22               “(A) TAXPAYERS TO WHICH PARAGRAPH  
23           APPLIES.—The credit under this section shall  
24           be determined under this paragraph if the tax-  
25           payer has no qualified research expenses in at

1           least 1 of the 3 taxable years preceding the tax-  
 2           able year for which the credit is being deter-  
 3           mined.

4           “(B) CREDIT RATE.—The credit deter-  
 5           mined under this paragraph shall be equal to  
 6           10 percent of the qualified research expenses  
 7           for the taxable year.”.

8           (2) CONFORMING AMENDMENT.—Section 41 of  
 9           such Code is amended by striking subsection (c).

10          (c) UNIFORM REIMBURSEMENT RATES FOR ALL  
 11          CONTRACT RESEARCH EXPENSES OTHER THAN  
 12          AMOUNTS PAID FOR BASIC RESEARCH.—

13           (1) IN GENERAL.—Section 41(b)(3) of the In-  
 14          ternal Revenue Code of 1986 (relating to contract  
 15          research expenses) is amended—

16           (A) by striking “65 percent” and inserting  
 17           “80 percent”, and

18           (B) by striking subparagraphs (C) and  
 19           (D).

20           (2) BASIC RESEARCH PAYMENTS.—Section  
 21          41(b) of such Code is amended by redesignating  
 22          paragraph (4) as paragraph (5) and by inserting  
 23          after paragraph (3) the following new paragraph:

24           “(4) BASIC RESEARCH PAYMENTS.—

“(A) IN GENERAL.—In the case of basic research payments by the taxpayer, paragraph (3)(A) shall be applied by substituting ‘100 per cent’ for ‘80 percent’.

“(B) BASIC RESEARCH PAYMENTS DEFINED.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘basic research payment’ means, with respect to any taxable year, any amount paid in cash during such taxable year by a corporation to any qualified organization for basic research but only if—

“(I) such payment is pursuant to a written agreement between such corporation and such qualified organization, and

“(II) such basic research is to be performed by such qualified organization.

“(ii) EXCEPTION TO REQUIREMENT THAT RESEARCH BE PERFORMED BY THE ORGANIZATION.—In the case of a qualified organization described in clause (iii) or (iv) of subparagraph (C), subclause (II) of clause (i) shall not apply.

“(C) QUALIFIED ORGANIZATION.—For purposes of this paragraph, the term ‘qualified organization’ means any of the following organizations:

“(i) EDUCATIONAL INSTITUTIONS.—Any educational organization which—

“(I) is an institution of higher education (within the meaning of section 3304(f)), and

“(II) is described in section 170(b)(1)(A)(ii).

“(ii) CERTAIN SCIENTIFIC RESEARCH ORGANIZATIONS.—Any organization not described in clause (i) which—

“(I) is described in section 501(c)(3) and is exempt from tax under section 501(a),

“(II) is organized and operated primarily to conduct scientific research, and

“(III) is not a private foundation.

“(iii) SCIENTIFIC TAX-EXEMPT ORGANIZATIONS.—Any organization which—

1 “(I) is described in section  
2 501(c)(3) (other than a private foun-  
3 dation) or section 501(c)(6),

4 “(II) is exempt from tax under  
5 section 501(a),

6 “(III) is organized and operated  
7 primarily to promote scientific re-  
8 search by qualified organizations de-  
9 scribed in clause (i) pursuant to writ-  
10 ten research agreements, and

11 “(IV) currently expends substan-  
12 tially all of its funds or substantially  
13 all of the basic research payments re-  
14 ceived by it for grants to, or contracts  
15 for basic research with, an organiza-  
16 tion described in clause (i).

17 “(iv) CERTAIN GRANT ORGANIZA-  
18 TIONS.—Any organization not described in  
19 clause (ii) or (iii) which—

20 “(I) is described in section  
21 501(c)(3) and is exempt from tax  
22 under section 501(a) (other than a  
23 private foundation),

24 “(II) is established and main-  
25 tained by an organization established

before July 10, 1981, which meets the requirements of subclause (I),

“(III) is organized and operated exclusively for the purpose of making grants to organizations described in clause (i) pursuant to written research agreements for purposes of basic research, and

“(IV) makes an election, revocable only with the consent of the Secretary, to be treated as a private foundation for purposes of this title (other than section 4940, relating to excise tax based on investment income).

“(D) DEFINITIONS AND SPECIAL RULES.—

For purposes of this paragraph—

“(i) BASIC RESEARCH.—The term ‘basic research’ means any original investigation for the advancement of scientific knowledge not having a specific commercial objective, except that such term shall not include—

“(I) basic research conducted outside of the United States, and



1 “(II) basic research in the social  
2 sciences, arts, or humanities.

3 “(ii) TRADE OR BUSINESS QUALIFICA-  
4 TION.—For purposes of applying para-  
5 graph (1) to this paragraph, any basic re-  
6 search payments shall be treated as an  
7 amount paid in carrying on a trade or  
8 business of the taxpayer in the taxable  
9 year in which it is paid (without regard to  
10 the provisions of paragraph (3)(B)).

11 “(iii) CERTAIN CORPORATIONS NOT  
12 ELIGIBLE.—The term ‘corporation’ shall  
13 not include—

14 “(I) an S corporation,

15 “(II) a personal holding company  
16 (as defined in section 542), or

17 “(III) a service organization (as  
18 defined in section 414(m)(3)).”.

19 (3) CONFORMING AMENDMENTS.—

20 (A) Section 41 of such Code is amended by  
21 striking subsection (e).

22 (B) Section 41(f) of such Code is amended  
23 by striking paragraph (6).

24 (d) PERMANENT EXTENSION OF CREDIT.—

1           (1) IN GENERAL.—Section 41 of the Internal  
2 Revenue Code of 1986 is amended by striking sub-  
3 section (h).

4           (2) CONFORMING AMENDMENT.—Paragraph (1)  
5 of section 45C(b) of such Code is amended by strik-  
6 ing subparagraph (D).

7           (3) EFFECTIVE DATE.—The amendments made  
8 by this subsection shall apply to taxable years begin-  
9 ning after December 31, 2006.

10          (e) CONFORMING AMENDMENTS.—

11           (1) Section 41 of the Internal Revenue Code of  
12 1986 is amended by redesignating subsections (d),  
13 (f), and (g) as subsections (c), (d), and (e), respec-  
14 tively.

15           (2) Paragraphs (2)(A) and (5) (as redesignated  
16 by subsection (b)(2)) of section 41(b) of such Code  
17 are each amended by striking “subsection (f)(1)”  
18 and inserting “subsection (d)(1)”.

19           (3) Sections 45C(d)(3), 45G(e)(2), and  
20 936(h)(5)(C)(i)(IV)(c) of such Code are each  
21 amended by striking “section 41(f)” and inserting  
22 “section 41(d)”.

23           (4) Section 54(l)(3)(A) of such Code is amend-  
24 ed by striking “section 41(g)” and inserting “section  
25 41(e)”.

1           (5) Section 170(e)(4)(B)(i) of such Code is  
2           amended by striking “subparagraph (A) or subpara-  
3           graph (B) of section 41(e)(6)” and inserting “clause  
4           (i) or (ii) of section 41(b)(4)(C)”.

5           (6) Sections 197(f)(1)(C), 197(f)(9)(C)(i)(II),  
6           and 280C(b)(3) of such Code are each amended by  
7           striking “section 41(f)(1)” and inserting “section  
8           41(d)(1)”.

9           (7) Section 280C(b)(3) of such Code is amend-  
10          ed by striking “section 41(f)(5)” and inserting “sec-  
11          tion 41(d)(5)”.

12          (8) Section 280C(b)(3) of such Code is amend-  
13          ed by striking “section 41(f)(1)(B)” and inserting  
14          “section 41(d)(1)(B)”.

15          (9) Section 280C(c)(1) of such Code is amend-  
16          ed by striking “section 41(e)(2)” and inserting “sec-  
17          tion 41(b)(4)(B)”.

18          (10) Section 280C(c)(2)(A) of such Code is  
19          amended by striking “section 41(a)(1)” and insert-  
20          ing “section 41(a)”.

21          (11) Sections 936(j)(5)(D) and 965(c)(2)(C)(i)  
22          of such Code are each amended by striking “section  
23          41(f)(3)” and inserting “section 41(d)(3)”.

1 (f) EFFECTIVE DATE.—Except as otherwise provided  
 2 in this section, the amendments made by this section shall  
 3 apply to taxable years beginning after December 31, 2009.

4 (g) STUDY OF COMPLIANCE WITH SUBSTANTIATION  
 5 REQUIREMENTS.—The Secretary of the Treasury or his  
 6 delegate shall, not later than 1 year after the date of the  
 7 enactment of this Act, conduct a study of taxpayer compli-  
 8 ance with the substantiation requirements for claiming the  
 9 credit allowed under section 41 of the Internal Revenue  
 10 Code of 1986, including a study of—

11 (1) whether taxpayers maintain adequate record  
 12 keeping to determine eligibility for, and correct  
 13 amount of, the credit,

14 (2) the impact of failure to comply with such  
 15 requirements on the oversight and enforcement re-  
 16 sponsibilities of the Internal Revenue Service, and

17 (3) the burdens imposed on other taxpayers by  
 18 failure to comply with such requirements.

19 The Secretary shall report the results of such study to  
 20 the Committee on Ways and Means of the House of Rep-  
 21 resentatives and the Committee on Finance of the Senate,  
 22 including any recommendations for administrative or leg-  
 23 islative actions which could be taken to improve compli-  
 24 ance with such requirements.

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